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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,667	08/13/2001	Oleg M. Khodko	1086.2004-002	6418
21005	7590	05/03/2005	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			WALSH, JOHN B	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,667

Applicant(s)

KHODKO ET AL.

Examiner

John B. Walsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14 and 16-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 3-6, 10-14, 16-19 and 23-26 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,943,478 to Aggarwal.

As concerns claim 1, a computer network communications method comprising the steps of: transmitting from a client to a server a request to establish a connection (figure 3, step 1); iteratively (a) maintaining the connection in the absence of a substantive message (column 2, lines 27-28), wherein maintaining the connection includes transmitting an indicator (blank message) from the server to the client at short intervals; and (b) transmitting from the server to the client a substantive message upon existence of the substantive message at the server (step 4).

As concerns claim 3, wherein transmitting an indicator includes transmitting a single character indicator pre-established to indicate a non-substantive message (column 4, line 54; blank message is non-substantive).

As concerns claim 4, wherein the step of transmitting a substantive message further includes transmitting from the server to the client a predefined signal indicating existence at the server of the substantive message (message pops up, column 1, lines 20-21).

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As concerns claim 5, further comprising the step of receiving at the server a client ready message indicating that the client is prepared to accept the substantive message (column 3, lines 61-62).

As concerns claim 6, wherein transmissions between the client and the server occur using HTTP protocol (column 4, line 16).

As concerns claim 10, wherein the request to establish the connection includes an identifier that uniquely represents a current client application (column 2, lines 63-67).

As concerns claims 11, 12, 24 and 25, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

As concerns claim 13, wherein the step of transmitting a substantive message further includes the server exchanging substantive messages between two clients and thereby providing instant messaging (column 1, line 20).

As concerns claim 14, a computer network communications system comprising: a request from a client computer to a server computer for establishing a connection (figure 3, step 1); and the server in response to the request, maintaining the connection by transmitting an indicator (blank message) from the server to the client at short intervals (column 2, lines 27-28) and upon existence of a substantive message at the server, transmitting to the client the substantive message (step 4).

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As concerns claim 16, wherein the indicator includes a single character indicator pre-established to indicate a non-substantive message (column 4, line 54, blank message is non-substantive).

As concerns claim 17, wherein upon existence of the substantive message at the server, the server further transmits to the client a predefined signal indicating existence at the server of the substantive message (message pops up, column 1, lines 20-21).

As concerns claim 18, wherein the server receives a client ready message indicating that the client is prepared to accept the substantive message (column 3, lines 61-62).

As concerns claim 19, wherein transmissions between the client and the server occur using HTTP protocol (column 4, line 16).

As concerns claim 23, wherein the request transmitted from the client includes an identifier that uniquely represents a current client application (column 2, lines 63-67).

As concerns claim 26, wherein the server further exchanges substantive messages between two clients and thereby provides instant messaging (column 1, line 20).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-9 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,943,478 to Aggarwal as applied to claims 1 and 14 above.

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Aggarwal '478 does not explicitly recite wherein client side transmissions are implemented at least partly in HTML, JAVA or ActiveX control.

It would have been obvious to one having ordinary skill in the art to implement transmission in HTML, JAVA or ActiveX control on the client side, since it is well known in the art to use HTML, Java or ActiveX control on client software and such a use is seen as an obvious design choice.

Response to Arguments

5. Applicant's arguments filed January 24, 2005 have been fully considered but they are not persuasive.

Applicant's argument that Aggarwal does not send an indicator, rather Aggarwal sends a blank message to maintain an active connection. This argument is unpersuasive since a blank message can be construed as an indicator and the blank message is performing the same function as applicant's indicator, which is to maintain an active connection. The examiner has given the claims their broadest reasonable interpretation. (Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).)

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

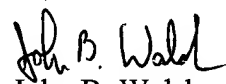
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 703-305-0444. The examiner can normally be reached on Monday-Friday from 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 703-308-6687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John B. Walsh
Primary Examiner
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